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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable William F. Walsh
House of Representatives

Dear Mr. Walsh:

Pursuant to your letter of November 7, 1975, we have reviewed the attempted enrollment of Mr. James R. Shope, Jr., in an external degree program offered by Elba Systems Corporation under the sponsorship of Northwest Missouri State University and Mr. Shope's claim to veterans' educational benefits stemming from that attempted enrollment.

THE UNIVERSITY/ELBA PROGRAM

Until November 1974, the university, under a contractual arrangement with Elba Systems Corporation, a correspondence school located in Denver, Colorado, offered a 10-month independent study program in life insurance and equity sales leading to an Associate of Technology Degree. The program had been approved for veterans' educational benefits by Missouri's State Approving Agency in accordance with section 1772, title 38, of the United States Code.

On November 7, 1974, because it had lost administrative control over the rapidly expanding program, the university decided to stop enrolling new students in the Associate of Technology Degree program and to terminate its relationship with Elba. The Missouri State Approving Agency, upon being advised of the university's action and pursuant to its authority under title 38, amended its approval of the program--suspending enrollment of veterans or other persons eligible for educational benefits on or after November 8, 1974--and so notified the Veterans Administration's (VA's) regional office in St. Louis. VA in turn suspended certification of all new enrollments in the program after November 7, 1974.

MR. SHOPE'S APPLICATION FOR VA
EDUCATIONAL ASSISTANCE BENEFITS

Mr. Shope formally applied for admission to the program on October 31, 1974, transmitting his (1) signed application for provisional acceptance, (2) Veteran's Application for Program of Education or Training (VA Form 22-1990), and (3) Student Statement of Understanding Regarding University

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BEST DOCUMENT AVAILABLE

Program Requirements. Both applications indicated an anticipated enrollment date of January 1, 1975.

The documents were signed by Mr. Shope on October 31, 1974, and forwarded to the university via Elba's admissions representative. However, according to a VA coordinator employed by the university, Mr. Shope's application was not received until December 13, 1974. The coordinator believed the delay occurred probably because the application had been forwarded first to Elba in Denver, Colorado.

The coordinator stated that Mr. Shope was tentatively accepted for a 10-month independent study program, which was to have begun January 2, 1975, and to have ended October 31, 1975, leading to an Associate of Technology Degree. He said that he and other university officials initially misunderstood VA's statement that it would not accept enrollments after November 7, 1974. According to him, university officials were under the impression that applications signed or dated on or before November 7, 1974, would be accepted by VA regardless of the matriculation date. Because Mr. Shope's application was dated October 31, 1974, the school processed it.

The program consisted primarily of independent study and required only one 6-hour class session a month. In a telephone conversation with the Elba admissions representative in early November 1974, Mr. Shope was asked if he preferred to begin his course of studies on December 13 and 14, 1974, in a session to be held at Windham College, Putney, Vermont. The admissions representative gave Mr. Shope the impression that one day of the session would fulfill the November course requirement and the other would fulfill the December requirement. Mr. Shope therefore believed that by participating in these classes his date of matriculation could be effective November 1, 1974.

According to the VA coordinator, the admissions representative had no authority to make this type of arrangement with Mr. Shope when all his application documents stated a matriculation date of January 1, 1975. The VA coordinator stated that university officials were not aware of Mr. Shope's attendance at these sessions until January 31, 1975.

On December 17, 1974, the university forwarded the following documents to the St. Louis VA Regional Office to obtain approval for Mr. Shope's educational assistance payments.

--Veteran's Application For Program of Education or Training (VA Form 22-1990).

--Report of Separation from Active Military Service
(DD214).

--Certification of Enrollment (VA Form 22-1999).

According to the VA coordinator, these documents were included in a packet containing similar applications from other persons desiring to enter the program, which he believes was hand-delivered to the VA regional office.

A VA liaison representative at the St. Louis VA Regional Office told us that the packet as described by the university's VA coordinator was received by the regional office sometime in December 1974 (specific date unknown), at which time the applications were screened for date of entry (matriculation date). He said, the applications were returned without action to the university because the applicants had matriculation dates of December 1974 or January 1975, after the VA cutoff date for new enrollments. According to the representative, there was no date of VA receipt stamped on any of the applications in the packet because all were rejected.

Meanwhile, Mr. Shope attended the Vermont session on December 13 and 14, 1974, and another session held at the same place on January 31 and February 1, 1975. He was not charged any tuition or fees by the university for attending these classes. The VA coordinator attended the January 31 and February 1 class sessions and learned of Mr. Shope's participation in the classes.

By letter of January 29, 1975, the director of industry service programs at the university notified Mr. Shope that his admission for the Associate of Technology Degree program had been disapproved because his enrollment date (matriculation date) was not effective prior to November 8, 1974, the date VA suspended approval of the program.

However, the next day, on January 30, 1975, a memorandum over the VA coordinator's stamped signature was sent to Mr. Shope stating that he had been "certified on 12-17-74 with the Veterans Administration," meaning, according to the coordinator, that the documents had been forwarded to VA for processing and possible approval for VA educational assistance payments. The coordinator said the January 30 memorandum was an error, sent out in his absence and should have not been sent. He said Mr. Shope was not and could not be certified by VA to receive educational assistance benefits, because the enrollment documents showed a matriculation date of January 1, 1975.

In his May 20, 1975, letter to you, the Administrator of Veterans Affairs explained why Mr. Shope's claim for veterans benefits based upon his attendance at classes sponsored by the university was denied.

The Administrator stated that Mr. Shope's attendance at classes "before his official enrollment of January 1, 1975, is of little significance since the VA cannot pay educational benefits for classes taken prior to the official enrollment date certified by the school." Moreover, since enrollments in the course could not be accepted after November 7, 1974, and since Mr. Shope was not charged any tuition or fees by the university, the Administrator concluded that "there is no further action to be taken on Mr. Shope's claim by the Veterans Administration."

GAO VIEWS AS TO MR. SHOPE'S
ENTITLEMENT TO VA BENEFITS

In your letter of November 7, 1975, you asked for our views as to whether Mr. Shope and other veterans similarly situated are entitled to receive VA educational benefit allowances. However, we have no jurisdiction to review the matter, other than to ascertain the facts, as we have done.

Under the provision of 38 U.S.C. §211 (a), decisions of the Administrator on any question of law or fact under any law administered by the Veterans Administration, with exceptions not applicable here, are final and conclusive, and no other official nor any court of the United States has power or jurisdiction to review such decisions by an action in the nature of mandamus or otherwise.

Courts have upheld this provision as precluding judicial review of a decision by VA to suspend a school's certification or to deny educational benefits to a veteran determined ineligible to receive them. See Johnson v. Robison, 415 U.S. 361 (1974); Brasier v. United States, 223 F.2d 762, 766 (8th Cir. 1955), cert. denied 350 U.S. 913, rehearing denied 350 U.S. 943; Steinmasel v. United States, 202 F. Supp. 335 (D.S.D. 1962).

In view of the above, it would be inappropriate for our Office to render an opinion as to Mr. Shope's eligibility to receive educational benefits.

We should mention, however, that, according to VA, a total of 53 veteran students were actually enrolled inadvertently in the program after the cutoff date of November 7,

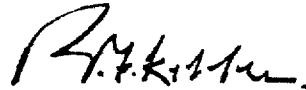
1974, and, as a consequence, VA awarded education assistance payments in the amount of \$69,127.49 to these students. VA is in the process of recovering this money. Had Mr. Shope been formally enrolled in the program and had he then received VA payments, he would now, with 53 other students, face the prospect of having to refund the entire amount of those payments to VA.

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We share your concern for fair and equitable resolution of the claims of Mr. Shope and other veterans who attempted to enroll in the program and hope that the above chronology we have prepared will be of benefit to you in your inquiry.

The information in this report has been informally discussed with officials of VA's Department of Veterans Benefits and Internal Audit Service. They concurred in the information as presented.

Sincerely yours,



DEPUTY Comptroller General
of the United States